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BEFORE THE ARIZONA CORPORATION**COMMISSIONERS**

BOB STUMP – Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUN 25 2014

DOCKETED BY

DOCKET NO. WS-02987A-12-0136

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, L.L.C. FOR APPROVAL
TO EXTEND ITS CERTIFICATES OF
CONVENIENCE AND NECESSITY TO
PROVIDE WATER AND WASTEWATER
UTILITY SERVICES IN ARIZONA.

ORIGINAL**PROCEDURAL ORDER****BY THE COMMISSION:**

On April 6, 2012, Johnson Utilities, L.L.C. ("Johnson" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for approval to extend its Certificate of Convenience and Necessity ("CC&N") to provide water and sewer services to an area known as Bella Vista North (located approximately 0.7 miles from the Town of Florence) and Merrill Ranch Expansion #1 (located within the limits of the Town of Florence).

On April 18, 2012, Johnson filed supplements to its application.

On May 7, 2012, the Commission's Utilities Division ("Staff") issued an Insufficiency Letter, stating that Johnson's application had not met the sufficiency requirements as set forth in the Arizona Administrative Code ("A.A.C.").

On May 23, 2012, Johnson filed responses to Staff's Insufficiency Letter.

On July 27, 2012, Johnson filed additional information in support of its application.

On November 30, 2012, Johnson filed an amended legal description which, at the developer's request, deleted a portion of the requested extension area.

On December 20, 2012, Johnson filed an updated legal description.

On February 6, 2013, Staff filed a Sufficiency Letter in this docket stating that Johnson's application had met the sufficiency requirements as outlined in the A.A.C.

On February 12, 2013, by Procedural Order, the matter was scheduled for hearing and procedural deadlines were established.

1 On March 8, 2013, Johnson filed a Notice of Appearance of Counsel and Request to Modify
2 Procedural Schedule.

3 On March 12, 2013, a Procedural Order was issued modifying the procedural deadline for
4 filing the Staff Report and Johnson's time to file objections to the Staff Report.

5 On March 20, 2013, Johnson filed a Notice of Filing Affidavit of Publication and Affidavit of
6 Mailing Notice.

7 On April 2, 2013, Staff filed a Staff Report in this matter, recommending an Order
8 Preliminary with conditions.

9 On April 12, 2013, Johnson filed comments on the Staff Report.

10 On April 18, 2013, a full evidentiary hearing was held as scheduled before a duly authorized
11 Administrative Law Judge of the Commission. Johnson and Staff appeared through counsel and no
12 members of the public appeared to present public comments. At the conclusion of the hearing, Staff
13 was instructed to file a Closing Brief; the Company was instructed that it may file a response; and the
14 Company was directed to file a late-filed exhibit related to Arizona Department of Environmental
15 Quality ("ADEQ") violations.

16 On April 19, 2013, Johnson docketed a Notice of Filing Late-Filed Exhibits.

17 On May 8, 2013, Staff filed a request for an extension of time, from May 13, 2013 to May 22,
18 2013, to file its closing brief. Staff's request stated that the Company did not oppose Staff's request
19 for an extension of time to file Staff's Closing Brief. Further, Staff requested that the time for the
20 Company to file a responsive brief be extended accordingly.

21 On May 13, 2013, a Procedural Order was issued granting Staff's request for additional time
22 to file its closing brief and for Johnson to file a responsive brief. The timeclock in this matter was
23 also suspended.

24 On May 21, 2013, Johnson filed a Notice of Late Filing Updated Preliminary Engineering
25 Analysis.

26 On May 22, 2013, Staff filed its Closing Brief.

27 On June 10, 2013, Johnson filed a Request to Extend Deadline for Filing Response to Staff's
28 Closing Brief. Johnson's request stated that Johnson and Staff had a scheduled meeting on June 14,

1 2013, which might lead to a narrowing of the issues in the case. Therefore, Johnson requested an
2 extension of time from June 10, 2013 to June 17, 2013, for Johnson to file a responsive brief in this
3 matter. Johnson's request stated that Staff did not oppose Johnson's requested extension of the time
4 deadline.

5 On June 11, 2013, a Procedural Order was issued granting Johnson's request and granting
6 Staff an extension of time until July 1, 2013, to file a reply to Johnson's response.

7 On June 17, 2013, Johnson filed a second request to extend the time deadline. In its request,
8 Johnson stated that Johnson and Staff met on June 14, 2013, in an effort to clarify and narrow the
9 disagreements between the parties regarding Staff's recommendations as listed in Staff's Closing
10 Brief. Further, Johnson's request stated that the meeting was productive and the parties would like
11 some additional time for further discussions and to gather some additional information. Johnson
12 requested an extension of time from June 17, 2013 to July 1, 2013, to file its response to Staff's
13 Closing Brief and that the time deadline for Staff to file its reply be extended to July 15, 2013.
14 Johnson stated that Staff supports Johnson's request.

15 On the same date, Staff docketed a Notice of Filing Supplement to Closing Brief, indicating
16 that Staff had learned Arizona Department of Environmental Quality ("ADEQ") had closed two
17 Notices of Violations ("NOVs") issued to Johnson in October and November of 2012, but that two
18 additional NOVs had issued on May 31, 2013, and that the NOVs had been docketed in Docket Nos.
19 WS-02987A-99-0583; WS-02987A-00-0618; WS-02987A-00-0774; and WS-02987A-00-0784.
20 Staff stated that based on Johnson's continuing non-compliance with ADEQ, these facts did not
21 change Staff's recommendation that the issuance of an Order Preliminary is appropriate.

22 On June 19, 2013, by Procedural Order, Johnson's request for an extension of time from June
23 17, 2013 to July 1, 2013, was granted and the time for Staff to file its reply was extended to July 15,
24 2013.

25 On July 3, 2013, Johnson filed a Request for Retroactive Extension of Deadline for Filing
26 Response to Staff's Closing Brief. Johnson requests an extension of the time deadline from July 1,
27 2013 to July 8, 2013, to file its response to Staff's Closing Brief. Johnson states counsel for Johnson
28 failed to calendar the deadline and was out of state when the response was due; and that counsel for

1 Staff does not oppose Johnson's request, but also requests an extension of Staff's deadline, from July
2 15, 2013 to August 7, 2013, to file its reply.

3 On July 5, 2013, by Procedural Order, Johnson's request for an extension of time from July 1,
4 2013 to July 8, 2013, was granted and the time for Staff to file its reply was extended to August 7,
5 2013.

6 On July 8, 2013, Johnson filed its Response to Staff's Closing Brief and Supplement to
7 Closing Brief.

8 On August 6, 2013, Staff filed its Notice of Filing Reply.

9 On August 9, 2013, Staff filed a Notice of Errata, correcting an error in its recommendation
10 number five of its reply brief.

11 On September 20, 2013, Johnson filed a Motion for Leave to Late File Comments on Staff's
12 Modified Recommendations as set forth in Staff's Reply and Notice of Filing Letters from ADEQ
13 Resolving Notices of Violation.

14 On October 9, 2013, Staff filed a Stipulation to Extension of Time and for Leave to File
15 Comments.

16 On October 17, 2013, Staff filed its Response to Motion for Leave to Late-File Comments on
17 Staff's Modified Recommendations as Set Forth in Staff's Reply and Notice of Filing Letters From
18 ADEQ Resolving Notices of Violation, stating that the additional information submitted by the
19 Company did not warrant the issuance of an extension of the Company's CC&Ns with conditions,
20 but that Staff continued to recommend an Order Preliminary in this matter.

21 On December 31, 2013, Johnson filed, in Docket No. WS-02987A-13-0477, an Application
22 for Approval of the Sale and Transfer of Assets and Conditional Cancellation of Certificate of
23 Convenience and Necessity ("Transfer Docket"). Johnson's application requested Commission
24 approval of sale and transfer of all its utility assets and operations to the Town of Florence ("Town"),
25 an Arizona municipality, and conditional cancellation of Johnson's CC&N. Johnson stated that its
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1 pending applications with the Commission, including this matter, would be withdrawn once the
2 Commission deems Johnson's application in the Transfer Docket sufficient.¹

3 On February 24, 2014, Johnson filed a Request for Recommended Opinion and Order
4 ("ROO") in this docket, requesting that the Hearing Division move forward and submit a ROO for
5 the Commission's consideration on Johnson's CC&N extension application in this docket.

6 On March 3, 2014, by Procedural Order, Staff was directed to respond to Johnson's request
7 on or before March 17, 2014, and Johnson was permitted to reply to Staff's Response on or before
8 March 31, 2014.

9 On March 11, 2014, Staff filed Response to Request for Recommended Opinion and Order.

10 On May 23, 2014, Johnson filed a Motion to Withdraw Application in the Transfer Docket.

11 On the same day, Johnson filed Renewed Request for Recommended Opinion and Order.

12 A review of the record shows Staff's final recommendation for an Order Preliminary is
13 premised on outstanding Notices of Violation ("NOVs") from ADEQ and the need for ADEQ's
14 Approvals to Construct ("ATC") water and wastewater facilities for the first parcel of Merrill Ranch
15 Expansion One Units 59A, 59C, 59D, and 59E. Substantial time has passed since Staff made its final
16 recommendation, and it is appropriate to update the record as to whether the facts underlying Staff's
17 recommendation have changed. In addition, because Staff's final recommendation was made after
18 the hearing, the record is not clear as to the reason for Staff's continued recommendation of an Order
19 Preliminary for only four out of the 18 planned Units in the extension area once the Company's
20 outstanding NOVs are resolved. Accordingly, it is appropriate to require the parties to docket a filing
21 updating and clarifying their positions and recommendations, including the reasons underlying those
22 recommendations, on these remaining issues.

23 **IT IS THEREFORE ORDERED that Staff shall docket a filing on or before July 2, 2014,**
24 **updating and clarifying its position and its rationale as it pertains to the status of Johnson's**
25 **NOVs from October 12, 2012 and May 30, 2013 as well as Staff's continued recommendation**
26 **for an Order Preliminary, once the NOVs reach resolution, for a portion of the extension area**

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28 ¹ Johnson currently has pending applications in Docket Nos. WS-02987A-12-0136, WS-02987A-13-0284, and WS-
02987A-13-0310, to extend its water and sewer CC&N.

1 for updated engineering analysis or ADEQ-ATCs. Staff should indicate whether additional
2 testimony at hearing would be appropriate.

3 IT IS FURTHER ORDERED that Johnson shall file a response to the Staff filing on or
4 before July 9, 2014.

5 IT IS FURTHER ORDERED that the timeclock in this matter remains suspended.

6 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
7 Communications) continues to apply to this proceeding and shall remain in effect until the
8 Commission's Decision in this matter is final and non-appealable.

9 IT IS FURTHER ORDERED that all parties must comply with Arizona Supreme Court Rules
10 31 and 38 and A.R.S. §40-243 with respect to the practice of law and admission *pro hac vice*.

11 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance
12 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Arizona
13 Supreme Court Rule 42). Representation before the Commission includes the obligation to appear at
14 all hearings, procedural conferences, and Open Meetings for which the matter is scheduled for
15 discussion, unless counsel has previously been granted permission to withdraw by the Administrative
16 Law Judge or Commission.

17 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,
18 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at
19 hearing.

20 DATED this 25th day of June, 2014.

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SASHA PATERNOSTER
ADMINISTRATIVE LAW JUDGE

24 Copies of the foregoing mailed
25 this 25th day of June, 2014, to:

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